Corporation v. *Landis*, 261 Fed. 440 (E. D. Pa.); *Ingram Day Lumber Co.* v. *Emergency Fleet Corporation*, 267 Fed. 283, 293 (S. D. Miss.). An agent of the government, merely because he is such, is not relieved of liability for his acts. *Osborn* v. *Bank of United States*, 9 Wheat. (U. S.) 738, 843. But the Corporation will not be liable for its acts properly performed within the scope of valid authority. Such acts are the government's alone. *Ballaine* v. *Alaska Northern Ry. Co.*, 259 Fed. 183 (9th Circ.). See *Ingram Day Lumber Co.* v. *Emergency Fleet Corporation*, *supra*. The only plausible argument urged against the decision in the principal cases, that it will mean a variety of judgments from state courts rendered without uniformity in rules of evidence and procedure, is untenable. All cases are removable to the federal courts, the Corporation being formed under the laws of the United States. *Rosenberg* v. *Emergency Fleet Corporation*, 271 Fed. 956 (D. Ore.); *Pacific Railroad Removal Cases*, 115 U. S. 1.

CRIMINAL LAW — INFORMATIONS — JUDICIAL DISCRETION IN FILING OF INFORMATIONS. — Leave of court was asked to file informations against the defendants, for hunting wild ducks after sunset, in violation of the regulations under the Migratory Bird Treaty Act. (1919 COMP. ST. ANN. SUPP. §§ 8837a–8837m.) The evidence tended to show a case for prosecution. *Held*, that leave be denied. *In Re Informations Under Migratory Bird Treaty Act*, 281 Fed. 546, 548 (D. Mont.).

For a discussion of the principles involved, see NOTES, *supra*, p. 204.

CRIMINAL LAW — STATUTORY OFFENSES — VIOLATION OF CRIMINAL ANARCHY ACT. — A statute defined criminal anarchy as "the doctrine that organized government should be overthrown by force or violence . . . or by any unlawful means," and made advocacy of criminal anarchy a felony N. Y. CONSOL. LAWS, c. 40, §§ 160, 161; 1918 PENAL LAW, §§ 160, 161, the defendant was convicted for publishing in his newspaper an article advocating the overthrow of the present government by a mass strike, and the substitution for it of "the dictatorship of the proletariat." *Held*, that the conviction be affirmed. *People* v. *Gitlow*, 234 N. Y. 132, 136 N. E. 317.

For a discussion of the principles involved, see NOTES, *supra*. p. 199.

CRIMINAL LAW — TRIAL — WAIVER OF PRIVILEGE FROM COMMENT ON SILENCE. — In a criminal trial where the defendant took the stand the prosecution was permitted over objection to question him on his failure to testify in the preliminary examination before the grand jury and at the coroner's inquest. A statute provided that the neglect of the defendant in any criminal case or proceeding to testify should not create any presumption against him and that the court should not permit any reference or comment to be made to or upon such neglect. (1915 MICH. COMP. LAWS, § 12552.) *Held*, that the conviction be affirmed. *People* v. *Prevost*, 189 N. W. 92 (Mich.).

For a discussion of the principles involved, see NOTES, *supra*, p. 207.

DAMAGES — AVOIDABLE CONSEQUENCES — BREACH OF WARRANTY. — The X Company contracted with the plaintiff to install a heating system for $810, that would meet certain specifications, in default of which the contractor agreed to remove the system and refund the purchase price. The defendant as surety executed a bond for the performance of the contract. After installment and a satisfactory preliminary test the purchase price was paid. Thereafter the system was unable to meet the requirements, of which the defendant and the contractor were duly and repeatedly notified, with a request to remove the system. Five months later when no action had been taken by the contractor or the defendant, the plaintiff had the plant remodelled for $690, and claimed that it would cost $464

additional to make it meet the guaranteed requirements. In an action for breach of warranty judgment was entered against the defendant for $690 and against the contractor for $464. *Held*, that the proper damages were the difference between the purchase price and the reasonable value of the system as installed. *Nunn* v. *Brillhart*, 242 S. W. 459 (Tex. Civ. App.).

Where the contractor fails to comply with a request for removal, the buyer may have the article removed, charging this expense to the seller, or retain it, and bring an action for breach of warranty against the seller or his surety. *Rochevot* v. *Wolf*, 96 App. Div. 506, 89 N. Y. Supp. 142. Damages for breach of warranty are ordinarily the difference between the value of the article as warranted and its value as delivered. *Archer* v. *Milwaukee Auto Engine & Supply Co.*, 144 Wis. 476, 129 N. W. 598. The vendee, however, must take reasonable measures to mitigate damages. *Rochevot* v. *Wolf*, *supra*. The reason for this is that he is not legally damaged by those consequences which he could have avoided by the use of due care. See SEDGWICK, DAMAGES, 9 ed., § 202. He may then recover reasonable amounts expended in his attempts to mitigate damages. *Benjamin* v. *Hilliard*, 23 How. (U. S.) 149; *Strawn* v. *Coggswell*, 28 Ill. 457; *Phelan* v. *Andrews*, 52 Ill. 486. Unreasonable expenditures will be disallowed. *Le Blanche* v. *London & N. W. Ry. Co.*, 1 C. P. Div. 286. *Cf. Burtraw* v. *Clark*, 103 Mich. 383, 61 N. W. 552. But if reasonable, they should not be disallowed because unsuccessful or ultimately more expensive than the initial loss. *Whitehead & Atherton Machine Co.* v. *Ryder*, 139 Mass. 366, 31 N. E. 736; *Edwards Mfg. Co.* v. *Stoops*, 54 Ind. App. 361, 102 N. E. 980; *Watson* v. *Proprietors of Lisbon Bridge*, 14 Me. 201. But see *Wilson* v. *Seattle Ry. Co.*, 55 Wash. 656, 104 Pac. 1114; *Gillett* v. *Western R. R. Corp.*, 8 Allen (Mass.), 560. The buyer should not be required to act at his peril in his attempt to mitigate damages. *Kadish* v. *Young*, 108 Ill. 170. *Contra*, *Missouri Furnace Co.* v. *Cochran*, 8 Fed. 463 (Circ. Ct. W. D. Pa.). If the action of the plaintiff in the principal case, in view of all the circumstances, was reasonable, the liability of the surety as well as the vendor should have been measured by the expenditures incurred in making the system meet the warranted requirements. The decision of the lower court should not have been reversed unless plainly contrary to the evidence.

DEEDS — RESTRICTIVE COVENANT — LOT NOT TO BE OCCUPIED BY A COLORED PERSON. — A lot, part of a plat, was sold subject to the restriction that it "shall not be occupied by a colored person." The defendants, colored persons, contracted with notice to buy the lot. The plaintiffs, owners of other lots in the same subdivision, filed a bill to restrain the defendants from occupying the premises. From a decree enjoining them from so doing, the defendants appealed on the ground that the restriction was void as contrary to public policy and the Fourteenth Amendment. *Held*, that the decree be affirmed. *Parmalee* v. *Morris*, 188 N. W. 330 (Mich.).

Following the example of California, courts are henceforth likely to distinguish restraints on alienation from restraints on use or occupancy of property. *Los Angeles Investment Co.* v. *Gary*, 181 Cal. 680, 186 Pac. 596. The former, in so far as they are total restraints in a purported conveyance of fee simple, are void. See LIT. § 360; CO. LIT. 206b; GRAY, RESTRAINTS ON ALIENATION, 2 ed., §§ 13, 23. Nor is a restraint on alienation valid because limited as to time. *Mandlebaum* v. *McDonell*, 29 Mich. 78, 107. But *cf. Wallace* v. *Smith*, 113 Ky. 263, 68 S. W. 131. The more difficult question is presented when the restraint is limited as to persons. On this point the authorities are in conflict. *Koehler* v. *Rowland*, 275 Mo. 573,